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SA:SPN/RTP
F.#2010R01491

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May 21, 2014

By Hand and ECF

The Honorable Nicholas G. Garaufis
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Ronald Herron, 10-CR-615 (NGG)

Dear Judge Garaufis:

The government respectfully submits this letter pursuant to the procedures for the admission of rap-related videos at trial set forth by the Court in its Memorandum and Order dated May 8, 2014. See Docket Entry No. 458. The government intends to introduce the rap-related video and audio excerpts specified in the table below, most of them previously identified and discussed in detail in the government's April 17, 2014 Memorandum of Law in Opposition to the Defendant's Motion In Limine to Preclude Evidence of the Defendant's Rap Music and Related Video and Audio Content. See Docket Entry No. 429 (the "government's April 17, 2013 memorandum").¹ The table includes the titles of the videos, the total length of each relevant excerpt the government intends to offer, the purpose for which the evidence is being introduced, and a brief summary of the legal basis for the admissibility of the excerpts. In addition, the government will provide for the Court's in camera review disks containing the complete video and audio files referenced herein, along with the clips, and transcripts thereof, the government intends to introduce at trial.

The government proposes to introduce a total of approximately twenty-two minutes of video and audio content out of hours of relevant and inculpatory material contained in dozens of audio and video recordings produced by the defendant in his efforts to make a name for himself as a gangsta rap artist and, more importantly, to project his power

¹ The government reserves the right to submit additional examples of the defendant's rap music and related video and audio content for consideration by the Court pursuant to the Court's Memorandum and Order of May 8, 2014.

as the leader of a violent criminal enterprise responsible for narcotics trafficking in the Gowanus Houses, the Wyckoff Gardens development and beyond. The proffered evidence was painstakingly culled from the available materials with an eye to ensuring that the probative value of the evidence is clear and far outweighs any danger of undue prejudice. The government intends to offer the bulk of the rap-related evidence through cooperating witnesses who participated in the filming of the videos, were members of the defendant's criminal enterprise, and will explain the meaning of various gang- and enterprise-related terms used by the defendant and the broader context in which he produced and disseminated the videos, including the defendant's determination to stand out as a real-life gangster who wrote songs and recorded documentary videos about his real-life experiences as a violent gang leader and narcotics trafficker.

Subject to the Court's approval, the government seeks to refer generally in its opening statement to (1) the recording of Herron threatening murderous retaliation against Victor Zapata and his associates for the shooting of his Lieutenant, Jorge Mejia, also known as "Moose" or "Mussolini," (2) Herron's statements about being a "Big Homie" and leader of the Murderous Mad Dogs, and (3) Herron's repeated boasts about securing an acquittal after his state trial for the murder of Frederick Brooks.

For the reasons set forth herein, in the government's April 17, 2014 memorandum, and in the Court's May 8, 2014 order denying the defendant's motion to preclude the introduction of rap-related evidence, the government respectfully requests that the Court order the evidence described below admissible at trial:

Live By The Gun, Die By The Gun	
Excerpt	Purpose/Admissibility
Clip 1	This 5 second video clip depicts the caption "Gowanus Projects, Brooklyn, NY," and the web address "worldstarhiphop.com," providing basic geographical context for the video and alerting jurors that the video contains hip-hop-related content and that it was made publicly available on the internet. The clip includes no assertions, other than the above-referenced captions, and is relevant and admissible to orient the jury before it hears the clip discussed below.
Clip 2	In this 43 second video clip, the defendant raps about his position as "Big Homie," or high ranking member of the Bloods; his membership in the Murderous Mad Dogs, a set of the Bloods with strong ties to the Gowanus neighborhood, a key source of the defendant's strength and reputation; and his illegal use and possession of firearms. Herron also states that he "put in [his] own work but niggas will kill for me," a reference to violence, including murders, that he has committed—the work he put in—and to violence carried out by others, such as his enforcers, at his behest as a leader of the charged criminal enterprise.

Shots Pon Dem	
Excerpt	Purpose/Admissibility
Clip 1	This 57 second video clip depicts the defendant shooting various firearms at a gun range located in Pennsylvania, including a semi-automatic handgun and a large caliber assault weapon. Cooperating witnesses will testify that the defendant regularly traveled to shooting ranges and practiced shooting firearms with other enterprise members. One cooperating witness will testify that he/she was present during the filming of this video. Another cooperating witness will also testify that Herron prided himself on being a true marksman in connection with his violent efforts on behalf of the enterprise. Moreover, paper targets similar, if not identical, to those held up by the defendant in this video were found in the vehicle Herron was riding in at the time of his arrest. Finally, during the video clip, the defendant self-identifies as “the Big Homie,” or “Homie,” both in song and conversation, again referencing his rank as a leader in the Bloods street gang. Such testimony and video evidence is, among other things, clear evidence of the charged enterprise and of the defendant’s and other enterprise members’ illegal use of firearms necessary to carry out their criminal purposes. Additionally, the video clip, in connection with the testimony of the cooperating witness who was present at the shooting range, and whose name, along with the defendants, is reflected in log book pages obtained from the shooting range, will serve to confirm a relationship of trust between the cooperating witness and the defendant.
Gutta Life	
Excerpt	Purpose/Admissibility
Clip 1	In this 51 second video clip, the defendant self identifies as a member of the Murderous Mad Dogs set of the Bloods and as a “Big Homie,” or leader, in the Bloods, and repeatedly displays Bloods gang signs, confirming his membership in that organization. The clip therefore constitutes direct evidence of the charged criminal enterprise.
Project Music 1 (Part 1)	
Excerpt	Purpose/Admissibility
Clip 1	This 5 minute and 6 second video clip depicts Herron standing inside or just outside of 423 Baltic Street, a building that multiple witnesses will testify served as a critical center of Herron’s drug distribution operation in the Gowanus neighborhood. During the video, Herron identifies the apartment that he grew up in, 423 Baltic Apartment 4E, a location in which a cooperating witness will testify that Herron and others regularly stored drugs and firearms, and sold crack-cocaine in connection with the

	<p>Enterprise, as early as January 1998.</p> <p>During the video, which was taped entirely by a cooperating witness who will be testifying at trial, another enterprise member can be observed engaging in a conversation with Herron on the steps of 423 Baltic Street. As Herron attempts to distribute t-shirts to promote his video documentary Project Music, he and the other Enterprise member are interrupted by a woman, who can be observed repeatedly asking for crack-cocaine from Herron and the other enterprise member. After Herron asks the other enterprise member whether or not the woman has recently been supplied with narcotics, Herron advises: “All right we gonna have that good stuff coming to you. You gonna get it. You gonna get it,” confirming that she will be supplied with narcotics at a later time. Herron then confirms that the exchanges between him, the other enterprise members and the woman seeking narcotics were not “scripted” for the camera. This video serves as clear evidence of Herron’s involvement in narcotics trafficking and the charged criminal enterprise. Similarly, it also serves as powerful evidence of the relationships of trust between Herron and the two enterprise members depicted in the video, both whom will be testifying as cooperating witnesses at trial.</p>
Project Music 1 (Part 2)	
Excerpt	Purpose/Admissibility
Clip 1	<p>During this 2 minute and 6 second video, which was also filmed by a cooperating witness who will be testifying at trial, Herron indicates that while other rappers are fake, he is real (“in the hood man, every day in the hood son . . . This ain’t no DVD shit”), and regularly carries and wears a firearm and body armor (“I’m gripped up, I’m vest up . . . I’m ready for war man, on all fronts man”), all of which is evidence of Herron’s illegal use of firearms, his involvement in the charged racketeering conduct, and his commitment to promoting his viewers/listeners about his real-life exploits as a ganster.</p>
Clip 2	<p>This 1 minutes and 7 second video, which was also filmed by a cooperating witness who will be testifying at trial, begins with a brief shot of Ronald Herron and deceased enterprise member Tremaine Patterson, also known as “Flaps” or “Cakes,” in a hospital. Herron, Patterson and the cooperating witness can be seen visiting Herron’s then-Lieutenant, Jorge Mejia, also known as “Moose,” and “Mussolini,” shortly after Mejia was shot during a dispute with Victor Zapata and Jose Vale, also known as “Manny,” or “Manolo,” in the Wyckoff Gardens development. The video cuts to Mejia, who can be observed bandaged and recovering in his hospital bed. During the video, Mejia, the defendant, and other members</p>

	<p>of Herron's enterprise, including the cooperating witness, can be heard pledging murderous retaliation against Zapata, Vale and their associates. Specifically, Mejia states "[y]eah this is Mussolini right here man. Live and direct. Live in the flesh. Just when you thought a motherfucker was finished. Naw, man. Yo, man we warriors man." To which the defendant responds, "[y]eah, yeah see you soon in a cemetery near you man." Mejia and another member of Herron's crew refer to themselves as "Mad Dogs," "Frank Mathews," or the "Frank Boys," each of which a cooperating witness will testify is reference to their membership in the Murderous Mad Dogs set of the Bloods Street gang.</p> <p>The statements of Herron, Mejia, Patterson, and the cooperating witness on this video constitute direct evidence of the enterprise's existence, as well as of Herron's involvement in the murder and plot to murder Victor Zapata charged as Racketeering Act Nine, and in Counts Seventeen, Eighteen, Nineteen, Twenty and Twenty-One of the Superseding Indictment. That Herron or his associates posted this video clip, with its brazen threat of retaliation, on the internet helps to prove that Herron and the members of his enterprise used videos, music and other media to "promote and enhance[] the prestige, reputation and position of the enterprise with respect to rival organizations," to "protect[] the [enterprise's] power", territory and criminal ventures . . . through the use of intimidation, threats of violence and acts of violence."</p>
Project Music 3	
Excerpt	Purpose/Admissibility
Clip 1	<p>This 2 minute video clip depicts Herron conversing with an enterprise member who is also a cooperating witness about a dispute between Herron and another rap artist. During this conversation, Herron suggests that he pays little mind to disputes with "random civilians," "rapper[s]," "entertainer[s]," or musicians because he has to address "real motherfucking drama and real beef" as the leader of a criminal enterprise. The cooperating witness who taped the video will testify about its filming and will confirm that Herron's reference to the "real motherfucking drama and real beef" is a direct reference to real, violent disputes related to Herron's operation of the charged criminal enterprise, including the dispute that resulted in the shooting of Herron's Lieutenant, Mejia, and Herron's and the organization's efforts to retaliate against other rivals including Zapata, Vale and their associates. Taken together, this video clip and the cooperating witness's testimony constitute direct proof of the existence of the charged enterprise; the murder and plot to murder Victor Zapata, as charged in Racketeering Act Nine and Counts Seventeen, Eighteen, Nineteen, Twenty and Twenty-One of the Superseding</p>

	<p>Indictment; and the critical relationship of trust between Herron and the cooperating witness who filmed the video.</p> <p>In addition, the video clip shows Herron discussing the extent of his control over other individuals and his continuing association with high-level members of the Bloods gang during his incarceration following his 2002 conviction and thereafter until his arrest in 2010. These statements by the defendant, including specific gang-related references that will be explained by the above-referenced cooperating witness, constitute direct, powerful evidence of the continuity of Herron's enterprise even while he was incarcerated.</p>
Project Music 14	
Excerpt	Purpose/Admissibility
Clip 1	<p>During this 2 minute and 14 second video clip, Herron identifies himself as a member of the Bloods, noting that he is "married" to the gang and has "blood diamonds in [his] wedding band." During the video clip, Herron also relates his belief that he is wanted by federal law enforcement ("federals"), that he has "blood" on his hands, that he only intends to "deal with it with god when they bury him a G[angster]," all of which reflect his consciousness of guilt. Herron concludes the video with a twice repeated refrain, noting that even though he is a large scale narcotics trafficker and racketeer, he would be willing to carry out extraordinary violence with little provocation ("major money racket, still kill niggas for small change"). He demonstrated that this was so when he murdered Frederick Brooks for selling small quantities of crack cocaine in the lobby of 198 Bond Street, a building Herron, then ascendant, wanted to take over. This clip constitutes evidence of the enterprise and of Herron's involvement in drug trafficking and related violence, including the three murders charged in the indictment.</p>
Ra Diggs TV – Project Music Rooftop	
Excerpt	Purpose/Admissibility
Clip 1	<p>This 1 minute and 18 second video depicts Herron entering 423 Baltic Street, one of the key bases of Herron's drug distribution operation and walking to the roof of the building together with his Lieutenant Mejia, and Tyhe Walker, also known as "GI," "GIB," and "Guy in the Bushes", both members of the enterprise. Herron, standing and talking between Mejia and Walker, discusses the filming of the Project Music video series and self identifies, along with Walker and Mejia, as members of the Murderous Mad Dogs set of the Bloods street gang. In particular, Herron makes hand gestures that a cooperating witness will testify reflects his membership in</p>

	the gang. This will serve as evidence of the enterprise's existence and confirm the relationship of trust and association among Herron and two of his key enterprise members, Walker and Mejia.
Clip 2	This 1 minute and 5 second video clip depicts Herron, on the roof of 423 Baltic Street, with Mejia and Tyhe Walker, during which Herron raps about his involvement in a drug organization based in the Gowanus neighborhood. During the video, Herron, Mejia and Walker brag about Herron's ability to evade law enforcement, specifically noting that he went "head to head with [then Brooklyn District Attorney] Charles Hynes" two times and never lost, reflecting, in part, his acquittal after trial for the murder of Frederick Brooks, charged in Racketeering Act Three, Count Five, Count Six, Count Seven and Count Eight, and the dismissal of the state charges against Herron for the September 7, 1998 attempted murder charged in Racketeering Act Two. That the defendant boasts about going head to head with the Brooklyn DA (and in other videos, about "beating a body"), reflects (1) that he does, indeed, rap about his real-life experiences, and (2) his pride in having, literally, gotten away with murder, an inference that will be supported by cooperating witness testimony that Herron sought to leverage the dismissal and the acquittal by the District Attorney's office to project an image of impunity in an effort to extend the reach of the enterprise's power. Notably, a cooperating witness will testify that Herron's acquittal for the murder of Frederick Brooks was legendary in the Gowanus neighborhood and beyond, and served to lend incalculable credibility to Herron's reputation for violence and his power as an untouchable leader of a violent criminal enterprise.
Man Down Tycoon Dynasty	
Excerpt	Purpose/Admissibility
Clip 1	This 4 second video clip reflects a brief display of a sign "423 Baltic," providing basic geographical context for the video. The clip includes no assertions, other than the above-referenced caption, and is relevant and admissible to orient the jury before it hears the subsequent clip.
Clip 2	This 14 second video clip depicts the defendant standing in the Gowanus neighborhood, with various members of his criminal enterprise, including Jorge Mejia and Walker. During this video, the defendant specifically raps about shooting a person through his eye and leaving the victim's "brain exposed." In addition to providing associational evidence of the enterprise's existence, this video is relevant evidence of Herron's murder of Frederick Brooks, as charged in Racketeering Act Three, Count Five, Count Six, Count Seven and Count Eight. Additional forensic evidence and the testimony of a cooperating witness will show that Herron shot

	Brooks in the eye and then later commented about how he observed the victim's brains on the floor of 198 Bond Street.
Slow Down Remix	
Excerpt	Purpose/Admissibility
Clip 1	In this 1 minute and 16 second video clip, Herron discusses with pride the amount of prison time served by members of his criminal enterprise, including "Moose" (Jorge Mejia), "Dip" (Vincent Winfield), and now deceased enterprise member, "Flaps" (Tremaine Patterson). Notably, Patterson appears 19 seconds into the video clip. Herron also refers to himself as the "Big Homie" or high ranking member of the bloods and, during the same video clip, Herron raps that he "just did six years for toting my biscuit [firearm]" a clear admission to his possession of gun at the time of his arrest in July 2001 in an apartment located at 130 Third Avenue, where the defendant was hiding after the murder of Frederick Brooks. Corroborating that admission and also serving as direct proof of Herron's involvement in narcotics trafficking and his illegal use of firearms, the government intends to call a law enforcement officer to testify that a quantity of crack cocaine and a .38 caliber firearm were recovered at the time of the defendant's arrest in the 130 Third Avenue apartment. Additionally, the defendant brags about "beating case after case" and "beat[ing] a body with an 18B," referencing again his acquittal after the state trial for the Brooks homicide. All of this serves as evidence of the charged enterprise, including Herron's involvement in narcotics trafficking, and reflects the fact that Herron leveraged the acquittal to project an image of impunity in an effort to extend the reach of the enterprise's power. As indicated above, a cooperating witness will testify that Herron's acquittal for the murder of Frederick Brooks was legendary in the Gowanus neighborhood and beyond, and served to lend credibility to Herron's reputation for violence and his power as an untouchable leader of that organization.
Heart of the Streets (Prey For My Enemies Audio CD)	
Excerpt	Purpose/Admissibility
Clip 1	In this 53 second audio clip, the defendant states that he is the "only nigga rap about killing and really doing the shooting." This highly inculpatory admission constitutes direct evidence of the defendant's involvement in violent criminal conduct, including murder, as a member of the enterprise.

Uncle Murda and Ra Diggs Discuss Rick Ross	
Excerpt	Purpose/Admissibility
Clip 1	<p>Finally, this 1 minute and 49 second video clip depicts an interview of Herron in which he discusses another rap artist Rick Ross. Herron describes his distaste for Ross's music, noting that it lacks authenticity because Ross raps about things he hasn't actually done. Contrasting his own music, Herron notes that he is "offended" that Rick Ross raps about a lifestyle that he does not live. The government seeks to offer this excerpt to rebut the defendant's apparent claim that Herron's rap lyrics are a fictional part of his gangsta rap persona. <u>See</u> Def. Motion in Limine, dated 4/9/14 at 4 (referring to Herron's "fictional gangsta rap character, Ra Diggs"). It is clear from this video, which does not contain the defendant's music, lyrics, or any other artistic content—it is an interview, nothing more—that the defendant uses the fact that he raps about real life to distinguish himself from other rap artists whose lyrics and rap personas are fictional.</p>

Respectfully submitted,

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